

MASS. HS51.2: Im 7

HEALTH AND ADDICTIONS RESEARCH, INC.

867 BOYLSTON STREET, SIXTH FLOOR

BOSTON, MASSACHUSETTS 02116

617-266-9219

617-266-9271



312066 0282 4109 1

The Impact on the Court System of Programmatic and

Legislative Changes for Drunken Drivers

GOVERNMENT DOCUMENTS
COLLECTION
SEP 20 1990
University of Massachusetts
Depository Copy

Dina A. Traniello, M.P.H.
Milly Krakow, Ph.D.
Carol N. Williams, Ph.D.
Richard Breen, M.A.

January, 1989

902/318

The Department of Public Health has statutory authority under the Massachusetts General Laws, Chapter 90, section 24D, to implement and monitor education and treatment programs for first and second offender drunken drivers. Since 1986, there have been two major changes (one legislative and one programmatic) impacting the programs for drunken drivers. In 1986, the state legislature passed the Safe Roads Act which increased the length of jail terms for second and third offenders. On July 1, 1987 the Department of Public Health intensified the Driver Alcohol Education (DAE) program for first offender drunken drivers from 15 to 40 hours in length.

In the fall of 1988, the Department of Public Health, through the Division of Substance Abuse Services, sponsored a study to analyze the impact of the programmatic and legislative changes on the court system. The study was conducted by Health and Addictions Research, Inc. This report presents the results of the study.

Study Procedures

The presiding first justices and chief probation officers from 30 District Courts with the highest referral rates to first offender programs, as determined by the Division of Substance Abuse Services' FY '88 Management Information System, were invited to participate in the study. District courts from all regions of the state were represented in the sample.

Staff from the Division of Substance Abuse Services coordinated with Chief Justice Zoll and Commissioner Cochran from the Department of Probation to conduct the study. Staff from Chief Justice Zoll's and Commissioner Cochran's offices provided input on the study procedures and instruments. Two instruments, one for judges and one for probation

officers, were pretested in a metropolitan court and revisions were made based on the pre-test. Both instruments contained questions on the demographic characteristics of respondents, awareness of changes in the program for first offenders, use of the first offender program, opinions about the program change, effects of the statutory change in the Safe Roads Act on court procedures, and opinions about aftercare, the probation fee, and general treatment approaches for DWI offenders. A description of the study and a copy of the instrument were then sent to all 30 presiding first justices and chief probation officers. All participants and courts were guaranteed confidentiality.

Interviewers were hired and trained to conduct telephone interviews with the judges and probation officers. Twenty-five judges and 30 probation officers participated in the study. Five judges did not participate due to time constraints or refusal to be interviewed over the telephone. Telephone interviews were conducted with all participants during a three week period in late September and early October, 1988. The interview took approximately one hour to administer. Content analyses of all the interviews were conducted by two independent raters and the congruence of their ratings checked. The results of the judges' and probation officers' interviews are reported separately.

Judge Interviews

Of the 25 participant judges, 22 were presiding first justices, one an acting first judge, and two were judges. All but one judge were male. The majority (n=23) were between the ages of 50-69. The average number of years as a judge was 14, with a range from 3 to 25 years.

Judges reported great variability by court in the amount of time spent on DWI cases. The percentage of DWI cases ranged from 5% to 80% of the judge's entire caseload and the percentage of bench time spent on these



Digitized by the Internet Archive
in 2014

<https://archive.org/details/impactoncourtsys00tran>

cases ranged from 5% to 70%. The majority of judges reported that less than 50% of all cases were DWI related, and almost all of these cases occupied less than half of their bench time.

Impact of First Offender Program Changes on the Court System

All judges were aware of the 1987 change in the first offender program lengthening the DAE program from 15 to 40 hours. Most learned of the change through correspondence from Chief Justice Zoll's office, the judge's conference held in Williamstown in the fall of 1987, and legislative briefings and directives.

Over half of the judges (n=14) reported that the program change did not affect the number of DWI cases their courts processed. Those who reported an increase in the number of cases (n=11) attributed the reason for this increase to better law enforcement. Three judges attributed a decrease in their DWI cases to overall public awareness of drunk driving issues and to the severity of the crime and penalties.

Almost two-thirds (n=16) of the judges reported no increased delays in the processing of DWI cases as a result of the program change, and half (n=13) reported no change in the average length of time between arraignment and disposition. Delays in the processing of DWI cases were attributed to a variety of causes: an increase in more serious offenses occurring in conjunction with the DWI offense, a shortage of judges to hear cases, and trial delays resulting from more people consulting lawyers. These same reasons were cited as contributing to the increased length of time between arraignment and disposition. However, five judges reported that defendants pleaded guilty early in the process to expedite their cases, contributing to a decrease in the time needed to dispose of cases.

The majority of judges (n=15) reported no change in the number of bench trials since the implementation of the 40 hour program, five reported an increase and five reported a decrease. About half (n=13) reported no change in the number of jury trials. However, ten judges reported an increase in requests for first instance jury trials over bench trials. Of the 15 judges who presided over jury as well as bench trials (ten judges only presided over bench trials), four judges reported increases in not guilty verdicts from jury trials, and nine reported no change. The percentage of not guilty verdicts ranged from 1% to 70%. Most judges (n=19) stated that the majority of first offender DWI cases were not appealed and that cases were returned to court for non-compliance less than 15% of the time. Poor program attendance, non-payment of fees, and arriving at the program intoxicated were the major reasons cited for offenders being returned to court for non-compliance.

Sanctions for First Offenders

Judges generally imposed the minimum statutory sanctions when sentencing first offenders. License suspension or revocation was used in the majority of cases. Most judges fined offenders the minimum \$200. One judge reported using jail 5% of the time, but the others seldom or never used this sanction. The majority of judges used the DAE program 90 - 100% of the time.

According to the judges, the few offenders who chose fines and license revocation over the DAE program were those who did not have a license, planned to drive without a license or did not need a license (e.g., out-of-state residents, military personnel, fishermen, and students).

Opinions About First Offender DAE Programs

Ten judges felt that the 40 hour DAE program offered a more in-depth intervention than was offered in the 15 hour program, was more comprehensive, and provided an opportunity for offenders to learn more, while 7 felt there were no advantages to the new program. Program length and cost were cited as disadvantages, though nine judges could not cite any disadvantages. Reducing the program cost, offering a sliding fee scale, or shortening the program were offered as solutions to remedy the disadvantages.

About half of the judges (n=12) felt that the program was somewhat effective in rehabilitating problem drinkers, 10 did not, and 3 were unsure. Almost half (n=11) believed the program reduced recidivism for driving while intoxicated, 8 believed it had no effect, and 6 were unsure. Half of the judges felt that first offenders were primarily social drinkers while half felt that they were problem drinkers.

Effects of the Statutory Change in the Safe Roads Act and Opinions About Programs for Second and Third Offenders

Most judges (n=17) stated that no change had occurred in the number of offenders who chose treatment over jail as a result of the change in the Safe Roads Act that made jail time equivalent to treatment time for second offenders. This lack of change was attributed to the fact that judges had offered jail time equal to treatment time prior to 1986. Judges reported that less than 5% of all second offenders were sentenced to jail in an average month; the majority selected treatment. Second and third offenders were more likely than first offenders to request jury trials and almost half of the judges (n=11) reported that these offenders appealed their convictions.

Almost all judges commented favorably on second offender programs. Only four judges were unsure if the programs were effective. Most judges

(n=20) reported that second offenders were returned to court less than 10% of the time for non-compliance. The major reasons cited for non-compliance were probation violations such as not attending the program, non-payment of fees, and re-arrests for new offenses. Most judges (n=15) reported no problems with admitting second offenders into programs, although five judges reported some delays in program admission due to program overcrowding. One judge cited too few beds for female offenders as a problem. Recommendations for improving the second offender program included providing offenders with a more equitable fee schedule, changing program admission criteria to accept offenders on medication, and assuring programs of timely state reimbursement for indigents.

About half of the judges (n=12) felt that the third offender programs were effective but several judges were unable to comment on the effectiveness of the third offender programs due to limited use of the programs. Third offenders are selected by the Department of Corrections into the treatment program directly from jail, so judges had less familiarity with the programs. The majority of judges made no recommendations for changing these programs.

Many judges believed there should be court ordered aftercare but that the length of time in aftercare should be determined by the program and be specific to the individual.

Eighteen judges felt that the Department of Public Health was effective in developing programs for first and second offenders, and only 3 judges felt that the Department was ineffective.

Probation Fee

A probation fee was instituted in July 1988, whereby offenders are required to pay the court the equivalent of one to three days' salary a month for as long as they are on probation. Although most judges had

instituted the probation fee (n=16), over one-third (n=9) thought it was burdensome and unfair, and several were not sure how it would affect their court.

Summary of Judges' Interviews

The legislative and programmatic changes in the first offender DWI program did not dramatically impact the judges' workload. Most judges did not report increases in the number of DWI cases or delays in processing these cases. Some judges reported changes in the number of bench and jury trials, but the factors which contributed to either a decrease or an increase were unclear. Judges were generally positive about the first offender program, although the high program cost was consistently mentioned as a disadvantage.

Judges rated second offender programs more positively than first offender programs. Only four judges did not believe the second offender programs were effective. Again, the high program cost and the lack of an equitable fee schedule were considered to be disadvantages. Most judges reported no problems with admitting second offenders into programs. Finally, the majority of judges felt the Department of Public Health was effective in developing programs for first and second offenders.

Probation Officers' Interviews

Of the 30 probation officers participating in the study, 23 were Chief Probation Officers, 4 were Assistant Probation Officers, and 3 were Probation Officers. All but one probation officer were male. The majority of respondents were between the ages of 40-59 (n=25), 4 were in their 30s and 1 was over 60 years of age. The respondents had worked an average of 18 years as probation officers, with a range from 5 to 29 years. Over half had been a probation officer between 11 and 20 years.

Probation officers reported great variation by court in the percentage of first, second and third DWI offenders in their caseload. Estimates of first offender DWI cases in probation departments ranged from 5% to 65%, from 2% to 30% for time spent on second offender cases, and from 1% to 30% for time spent on third offender cases. The total percentage of Department time necessary for handling DWI cases ranged from 12% to 95% with most cases taking less than 50% of the time. Three probation officers whose primary caseloads were DWI cases estimated these cases ranged from 33% to 100% for first offenders, from 5% to 15% for second offenders, and from 10% to 15% for third offenders. Individual probation officers responsible for DWI offenders spent almost 100% of their time processing these cases.

DWI cases remained on the probation officers' caseload from 1 to 3 years, depending upon the classification (first, second or third offense) and on whether other charges were filed at the time of arrest. Frequency of contact with the Department of Probation ranged from just the initial contact at arraignment to every two weeks for the entire probationary period. Many probation officers received status reports from the DAE programs and only met with the offender if problems arose.

Most probation officers felt that the DWI offender was more stable, more educated, more financially responsible, and exhibited less criminal behavior than other offenders. However, some probation officers believed that DWI offenders were more manipulative and had more substance abuse problems and denial of those problems than other offenders. In addition, some probation officers felt that there was more paperwork associated with DWI offenders than with other offenders.

Impact of the First Offender Program Changes

All thirty probation officers were aware of the first offender program change initiated in 1987. Most learned of the change from local DAE programs and through correspondence from the Department of Public Health, Commissioner of Probation Cochran, and Chief Justice Zoll. A few of the probation officers first heard about the changes through the media.

One-third of the probation officers (n=10) reported no change in their DWI caseload since the implementation of the 40 hour DAE program, 8 felt there was an increase and 11 reported a decrease. Those reporting an increase attributed it to more arrests resulting from better law enforcement and more public pressure. However, public awareness and police visibility were also cited as reasons for a decrease in their DWI caseload.

The majority of probation officers (n=23) reported no additional delays in the processing of DWI offenders since the program change. The seven probation officers who described delays suggested that these delays were due to longer waiting lists for program admission and a greater number of overall cases to process. Over half (n=17) stated that the program change affected the supervision of first offenders. Several probation officers suggested that the program consistency for all first offenders (i.e., the same program length for all offenders and no referrals to aftercare) improved the probation officers' ability to work with this group. Some probation officers indicated that increased program time resulted in additional paperwork and supervision time.

Probation officers reported that first offenders were returned to court for non-compliance less than 20% of the time. The major reasons for this action were poor program attendance, uncooperative behavior, failure

to pay fees, and attending class intoxicated or with alcohol on their breath. Probation officers reported that offenders chose license revocation and fines over the DAE program because they were unable to comply with the time commitment, they had no need for a driver's license or planned to drive without one, and they did not want to pay the program fees.

The majority of the probation officers (n=18) experienced no problems working with the DAE programs. Problems that existed were attributed to lack of communication between the programs and the probation department, and the inconsistency between programs in their treatment of DWI offenders. These problems did not appear to hamper the overall positive relationship between the DAE programs and the courts.

Opinions About the First Offender DAE Programs

About one-third (n=11) of the probation officers reported that no disadvantages resulted from changing the first offender program from 15 to 40 hours. Probation officers reported that the major advantages resulting from the program change were better screening, assessment, and monitoring, and the opportunity to develop a more trusting relationship with the offender. Requiring equal program participation time for everyone was also seen as an advantage by several probation officers. However, program length and schedule inflexibility were also cited as disadvantages. In addition, several probation officers felt that the high program costs and the amount of time spent collecting fees were disadvantages.

Nineteen probation officers thought that the first offender DAE programs were effective in reducing recidivism for driving while intoxicated, and 9 felt they were effective in rehabilitating problem drinkers. The high program costs, greater awareness of the penalties, and the embarrassment of being arrested for drunken driving were given as reasons contributing to the reduction in recidivism. Half of the

probation officers believed first offenders were social drinkers; half felt they were problem drinkers.

Effects of the Statutory Change in the Safe Roads Act and Opinions About Programs for Second and Third Offenders

According to most probation officers (n=18), the change in the Safe Roads Act that made jail time equivalent to treatment time did not influence second offenders' choice of treatment over jail. However, 12 probation officers reported an increase in the number of second offenders choosing treatment. Second offender programs were rated positively by most probation officers. Ten probation officers recommended creating additional programs for second offenders that included longer inpatient treatment and more intensive aftercare. Other recommendations included revising the fee schedule or lowering the costs of programs. Eight probation officers believed the second offender programs were very effective and made no recommendations for change.

Probation officers were more familiar than judges with third offender programs. Only 3 probation officers were unfamiliar with these programs and could not comment on their effectiveness. The probation officers were particularly impressed with the program at Longwood and recommended increasing the number of beds and the number of inpatient days and revising the criteria for admission to include offenders on medication and those with assaultive histories. Probation officers also recommended the need for more communication between the Department of Corrections and the courts to better coordinate aftercare plans.

Nineteen probation officers reported some problems with referral of DWI offenders into appropriate second and third offender programs. The major problems cited were the waiting lists for offender and aftercare programs and finding programs for those unable to pay for treatment.

Most probation officers believed that there should be some form of court ordered aftercare, but no agreement existed as to which offenders should be mandated to aftercare and how long it should last. Twenty-one probation officers thought the Department of Public Health was effective in developing programs for first and/or second offenders. Only five probation officers believed the Department was ineffective.

Recommendations to enhance the effectiveness of these programs focused on lowering the costs, revising the fee schedule, and finding more resources for indigents. Some probation officers recommended that programs should concentrate on decreasing the delay in starting classes by hiring more staff.

Probation Fee

Although some courts have not instituted probation fees, almost all of the probation officers were opposed to making the fee equivalent to one to three days a month of the offenders' salary. One-third recommended having a set fee by income level uniformly followed by all courts. Several felt that the money should be returned to the individual probation departments (or to the Division of Substance Abuse Services) to develop more programs for DWI offenders.

Summary of the Probation Officers' Interviews

Probation officers reported great variation by court in their DWI caseload and in the total percentage of time spent processing these cases. The majority reported a change in the number of DWI cases supervised but not additional delays in the processing of offenders since the first offender program change. Although program consistency has improved the probation officers' ability to work with offenders, increased

program time has also resulted in additional paperwork and supervision time.

Probation officers reported a positive relationship between the courts and the DAE programs. Most probation officers cited at least one advantage of the first offender program, although the increased program time was cited as both an advantage and disadvantage. Several probation officers felt that the high program costs and the amount of time spent collecting fees were disadvantages. The majority of probation officers believed that the first offender programs were effective in reducing recidivism for driving while intoxicated but not effective in rehabilitating problem drinkers.

Probation officers were more positive about multiple offender programs than first offender programs. Recommendations for enhancing second offender programs included creating additional programs that had more inpatient treatment, providing more intensive aftercare, and revising the fee schedule or lowering the costs. Most probation officers thought that the third offender programs were effective and were particularly pleased with the program at Longwood. Delays as a result of waiting lists for offender and aftercare programs and difficulties in finding programs for those unable to pay for treatment were cited as problems in placing offenders into the appropriate program. Overall, the majority of probation officers felt the Department of Public Health was effective in developing programs for first and second offenders.

Discussion

The program change lengthening the program from 15 to 40 hours for the DWI first offender appears to have had a greater impact on the probation officers than on the judges. Probation officers reported more changes than judges in the number of DWI cases handled, although neither reported

additional delays in the processing of cases. The majority of probation officers and judges reported that most DWI cases took less than 50% of the time to process. The program change has affected the probation officers' supervision of first offenders. Increased program time has improved the probation officers' ability to work with the offender but has also resulted in additional paperwork and supervision time. Both groups were evenly split as to whether or not they believed first offenders were problem or social drinkers.

Most probation officers and judges felt positive about the DAE programs. The program was viewed as a comprehensive, in depth intervention that provided offenders an opportunity to learn more about the impact of their drinking on others. However, both groups consistently cited the program cost as a disadvantage.

Probation officers thought that the DAE programs were more effective in reducing recidivism for driving while intoxicated than in rehabilitating problem drinkers. Judges were evenly divided on their views of program effectiveness. Both groups reported similar non-compliance rates for first offenders.

The majority of probation officers and judges reported that no change occurred in the number of second offenders who chose treatment over jail as a result of the statutory change in the Safe Roads Act. Both groups rated the second offender programs more favorably than the first offender programs, primarily because they felt more certain that second offenders were definitely alcohol abusers in need of treatment. Again, program recommendations included lowering program cost or providing offenders with a more equitable fee schedule.

More probation officers than judges reported problems with getting DWI offenders into the appropriate programs. This difference is probably due

to a difference in the job responsibilities of the judges and probation officers. The majority of probation officers and judges felt that the Department of Public Health was effective in developing programs for first and second offenders. Probation officers were more familiar than judges with third offender programs and rated the Longwood program very favorably. Many probation officers and judges believed that there should be some form of court ordered aftercare but there was great variation as to the recommended length of time. Although not all courts had instituted the probation fee, several judges and the majority of probation officers thought it was burdensome and unfair in its present form.

The results of this study indicate that, in general, the court system has successfully handled the impact of the programmatic and legislative changes affecting DWI offenders. Major issues of concern are program cost, the availability of programs for second and third offenders, and the implementation of the probation fee. Continued monitoring and resolution of these issues will result in a more effective program for drunk driving offenders throughout the state.

